

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

KELVIN ANDRE SPOTTS,

Movant,

vs.

**CRIMINAL ACTION NO. 3:98-00047-01
(CIVIL ACTION NO. 3:00-0647)**

UNITED STATES OF AMERICA ,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Movant Kelvin Andre Spotts' "Motion for Relief from Judgment under Federal Rules of Civil Procedure 60(b)(5)(3) [sic], See Gonzalez v. Crosby, 04-6432 (June 2005)" [docket no. 869] and two "Memorandum[s] in Support of Motion to Add or Amend Findings of Fact to be Rule [sic] upon after Motion for Relief from Judgment has been Ruled upon by this Court" [docket nos. 880 & 881]. On March 14, 2005, this Court entered an Order which fully describes the litigation in this case and which denied Movant's motion pursuant to Rule 60(b). On April 4, 2005, Movant appealed this decision. To date, the Fourth Circuit Court of Appeals has not ruled on Movant's appeal. In the meantime, Movant has filed an additional Rule 60(b) motion with this Court. In the March 14, 2005, the Court stated:

Given the length of time that has transpired since this Court made its original decision and the fact that this case has been fully litigated and is closed, the Court finds that Movant's motion is untimely under both Rule 59(e) (requiring a motion within 10 days

after judgment) and Rule 60(b) (requiring the motion be filed within a reasonable time) of the Federal Rules of Civil Procedure. Moreover, if the motion is treated as a successive § 2255 motion, this Court is without jurisdiction to consider it. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) (holding that a Rule 60(b) “motion directly attacking the prisoner’s conviction or sentence will usually amount to a successive application”). Accordingly, the Court **DENIES** Movant’s motion to reconsider.

Order of March 14, 2005, at 2. For the same reasons stated in the March 14, 2005 Order, the Court finds the current motion is untimely and the Court would be without jurisdiction if it treated the motion as a successive motion under 28 U.S.C. § 2255. Accordingly, the Court **DENIES** Movant’s Rule 60(b) motion and his motions to add or amend the findings of fact. [Docket nos. 869, 880, 881].

In reviewing the docket of this action, the Court further notes two miscellaneous motions that show as “pending.” The first motion was filed on February 9, 2004, and is a copy of a motion Movant apparently sent to the Fourth Circuit to stay the proceedings before that Court. [Docket no. 772]. To the extent this motion shows as pending before this Court, the Court **DIRECTS** the Clerk to terminate the motion. The second motion was filed on February 23, 2004, and is entitled “Motion and/or Request for Order for Appellant to Inspect Records and/or Transcripts at Governments [sic] Expense, and also a Request for an Extension of Time in Order to Perfect Preliminary Informal Brief for Habeas and Section § [sic] 2255 cases . . .” [Docket no. 777]. As the Court has denied Movant’s § 2255 motion and has denied his subsequent motions under Rule 60(b), together with his motions to amend and alter the Court’s previous rulings, the Court **DENIES** this motion as moot.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: August 30, 2005



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE